

ORIGINAL

Approved:


DANIEL LOSS
Assistant United States Attorney

Before: HONORABLE DEBRA FREEMAN
United States Magistrate Judge
Southern District of New York

18 MAG 3816

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UNITED STATES OF AMERICA

- v. -

KELVIN POLANCO,

Defendant.
----- x

:
: SEALED COMPLAINT
:
: Violation of
: 8 U.S.C.
: §§ 1326(a) & (b)(2)
:
: COUNTY OF OFFENSE:
: New York County
:

SOUTHERN DISTRICT OF NEW YORK, ss.:

BRIAN FIGUEIREDO, being duly sworn, deposes and says that he is a Deportation Officer with the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), and charges as follows:

COUNT ONE

1. From at least on or about January 14, 2018, in the Southern District of New York and elsewhere, KELVIN POLANCO, the defendant, being an alien, unlawfully did enter, and was found in the United States, after having been removed from the United States subsequent to a conviction for the commission of an aggravated felony, without having obtained the express consent of the Attorney General of the United States or his successor, the Secretary for the Department of Homeland Security, to reapply for admission.

(Title 8, United States Code, Sections 1326(a) & (b)(2))

The bases for my knowledge and the foregoing charge are, in part, as follows:

2. I am a Deportation Officer with ICE, and I have been personally involved in the investigation of this matter. This affidavit is based upon my conversations with other law

enforcement agents and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

3. Based on law enforcement agents' review of social media posts, I have learned, in substance and in part, the following:

a. The Facebook page for "El Chino R. Polanco" contains a January 14, 2018 posting of a photograph (the "Facebook Photograph") of a man and a child inside a commercial establishment that I recognize, from having visited there, as a restaurant located at 1455 Saint Nicholas Avenue in New York, New York (the "Manhattan Restaurant").

b. The Facebook Photograph was accompanied by a posting by "El Chino R. Polanco," in Spanish, that identified the individuals photographed as himself and his son.

c. The man in the Facebook Photograph appeared to be in his thirties, while the child appeared to be between approximately age 10 and age 13.

d. The "Contact Information" section of the Facebook page for "El Chino R. Polanco" lists the website address "<http://facebook.com/kelvin.polanco2zzge>."

4. Based on my review of photographs of KELVIN POLANCO, the defendant, contained in a law enforcement database, I believe, among other things, that the man in the Facebook Photograph appears to be POLANCO.

5. Based on my review of the file maintained by ICE regarding KELVIN POLANCO, the defendant, including his criminal history, I have learned, in substance and in part, the following:

a. POLANCO was born in January 1983 and is currently 35 years old, which is consistent with the appearance of the age of the man in the Facebook Photograph.

b. POLANCO is a citizen of the Dominican Republic. POLANCO has never been a citizen of the United States.

c. On or about April 14, 2009, POLANCO was convicted in the Supreme Court of New York, New York County, of Criminal Sale of a Controlled Substance in the Second Degree, in violation of New York Penal Law § 220.41. POLANCO was sentenced to a term of imprisonment of four years.

d. On or about April 21, 2009, POLANCO was convicted in the United States District Court for the Southern District of New York of Conspiracy to Distribute and Possess with the Intent to Distribute Cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846. POLANCO was sentenced to a term of imprisonment of 37 months.

e. In or about February 2011, POLANCO signed an affidavit stating, in substance and in part, that he had one child who was six years old at the time, which is significantly younger than the appearance of the child identified as the son of "El Chino R. Polanco" in the Facebook Photograph.

f. On or about December 6, 2011, POLANCO was removed from the United States to the Dominican Republic. As a result, I believe that POLANCO was present in the Manhattan Restaurant on a date after he had been removed from the United States in December 2011.

g. ICE has performed searches of the relevant ICE and Department of Homeland Security indices and confirmed that, following his removal to the Dominican Republic, POLANCO never obtained the consent of the Attorney General of the United States, or the Secretary for the Department of Homeland Security, to reapply for admission to the United States.

6. Based on my training and experience, I know that the 2009 federal conviction of KEVIN POLANCO, the defendant, was a conviction for an "aggravated felony" for purposes of Section 1326(b) of Title 8, United States Code.

WHEREFORE, deponent prays that a warrant issue for the arrest of KELVIN POLANCO, the defendant, and that he be arrested, and imprisoned or bailed as the case may be.



BRIAN FIGUEIREDO
Deportation Officer
Immigration and Customs Enforcement

Sworn to before me this
4th day of May, 2018



HONORABLE DEBRA FREEMAN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK